

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

WAYMAN LEE BOYINGTON, )  
Register No. 176633, )  
Plaintiff, )  
v. ) No. 06-4149-CV-C-SOW  
DAVE DORMIRE, et al., )  
Defendants. )

## ORDER

On August 3, 2006, the United States Magistrate Judge recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on September 8, 2006. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The law plaintiff cited regarding the "some evidence" standard to support disciplinary action preceded the Court's decision in Sandin v. Connor, 515 U.S. 472 (1995), and is not current. Accordingly, the court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

On August 3, 2006, the court granted plaintiff leave to proceed in forma pauperis on a provisional basis, and by doing so, the court determined to forego the collection of the \$350.00 filing fee established for civil cases. Plaintiff was warned that the court would collect the entire \$350.00 filing fee if he filed another pleading in this case. See 28 U.S.C.

§ 1915(b)(2) (provisions for deducting money from prisoner's account). A review of plaintiff's financial documentation indicates that he is capable of paying an initial partial filing fee of \$15.24.

IT IS, THEREFORE, ORDERED that plaintiff's initial partial filing fee is calculated at \$15.24 and the Missouri Department of Corrections is directed to deduct from plaintiff's inmate account, and forward to the court, the initial partial filing fee and installment payments, in accord with the provisions of 28 U.S.C. § 1915, until the \$350.00 filing fee is paid in full.

It is further

ORDERED that the Magistrate Judge's August 3, 2006 Report and Recommendation is adopted [5]. It is further

ORDERED that plaintiff's claims are dismissed, pursuant to the provisions of 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted.

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: November 6, 2006